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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

PARSLEY, DAVID J

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/044,682	SCHMIDT ET AL.	
	Examiner	Art Unit	
	David J Parsley	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 07 October 2004.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-8 and 10-24 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☒ Claim(s) 2-4, 7, 8, 10, 11 and 21-23 is/are allowed.

6) ☒ Claim(s) 1, 5, 6, 12-20 and 24 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on 09 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:

1. ☒ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	6) <input type="checkbox"/> Other: _____

Detailed Action

Amendment

1. This office action is in response to applicant's amendment dated 10-7-04 and this action is non-final.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5-6, 12-13 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,709,448 to McGuire et al.

Referring to claims 1, 12 and 24, McGuire et al. discloses an apparatus for transferring poultry carcasses suspended from shackles from a first overhead conveyor to a second overhead conveyor comprising, a transfer wheel – at 20, having a perimeter rotatable about a vertical axis – proximate 25, for positioning between the first and second conveyors – at A,B or C,D, the transfer wheel being provided with carcass holders – at 60,64, at the perimeter of the transfer wheel that are movable with the transfer wheel and revolve about the vertical axis of the transfer wheel – see for example figure 3, each carcass holder having an upwardly extending central shaft

– proximate 61, about which it rotates, the carcass holders being rotatable with respect to the transfer wheel – see for example figures 6-8, and holder orientation means – see figures 5-8 or at A and C as seen in figure 3, operatively associated with the transfer wheel configured for rotating the carcass holders with respect to the transfer wheel and for equalizing the rotational orientation of the carcass holders from receipt of the carcasses on the transfer wheel to the discharge of the carcasses from the transfer wheel, the initial rotational orientation and the final orientation of the carcasses being identical relative to the first overhead conveyor and the second overhead conveyor – see for example figures 1 and 3-4 at A,B or C,D.

Referring to claims 5 and 13, McGuire et al. discloses the orientation means – at A and C, is adapted for rotating the holders – at 60,64, 1:1 with respect to the rotation of the transfer wheel from receipt to discharge of the carcasses from the transfer wheel – at 20 – see for example figures 1-8.

Referring to claim 6, McGuire et al. discloses the orientation means comprises a first orientation means – at 62, for orienting a first of the holders – at 63, and second orientation means – at 61, for orienting others of the holders – at 64, the second orientation means are operated by the first orientation means – see for example figures 1-8.

Claims 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,514,033 to Berry.

Referring to claim 14, Berry discloses a holder – at 19, 19', for suspended transport of poultry, comprising a shackle for suspending a poultry carcass by its legs, the shackle provided with two substantially parallel accommodation spaces – proximate 24-27 and/or 24'-27', for the legs of the poultry, the accommodation spaces each forming a continuous open ended slit in a

horizontal direction, the distance between the accommodation spaces at their one end being different for the distance at their other end, with the legs of the carcass inserted into one end of the accommodation spaces – see for example figures 5-7. The limitations of the carcass suspended by its legs from the holder and carried by the holder to another location and the legs removed from the other end of the accommodation spaces constitutes method limitations in an apparatus claim and therefore are considered but are not deemed to add any structural limitations to the claimed apparatus. However, Berry does disclose these functional limitations as seen in figure 7 where the animal enters the shackle at the end of the shackle proximate – 23' and it is inherent that the animals are removed from the end of the shackle proximate 28 during later processing of the animal.

Referring to claim 15, Berry discloses inclined turned end members being arranged on either side of one end of the accommodation spaces to prevent unintentional backwards movement of the legs – see for example figure 6.

Referring to claim 16, Berry discloses the distance between the accommodation spaces being larger at one end than at the other end, and inclined turned end members being arranged on either side of one of the accommodation spaces to prevent unintentional backwards movement of the legs – see for example figures 5-6.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGuire et al. as applied to claims 1 and 12 above, and further in view of EP Patent No. 1038443 to Meyn.

Referring to claims 17-20, McGuire et al. does not disclose the holders being provided with accommodation spaces for the legs of the carcasses, the accommodation spaces each forming an open ended horizontal slit, and the distance between the accommodation spaces of the holders at their one end of the holders being different from the distance therebetween at their other end of the holders. Meyn '443 does disclose accommodation spaces at 3-5 for the legs of the carcass, the accommodation spaces forming a continuous horizontal slit – see for example figures 1-2, and the distance between the accommodation spaces at their one end being different from the distance therebetween at their other end – see for example figures 1-2 where the distance between the inner portions – 8 of the slit differ from the distance between the outer portions – at 6. Therefore it would have been obvious to one of ordinary skill in the art to take the device of McGuire et al. and add the holder of Meyn '443, so as to allow for less impedance to the movement of the carcass inside the holder.

Allowable Subject Matter

4. Claims 2-4, 7-8, 10-11 and 21-23 are allowed.

Response to Arguments

5. Regarding claim 1, the McGuire et al. reference US 4709448 does disclose equalizing rotational orientation of the carcass holders on the transfer wheel – at 25 as seen in figures 1-3, where each carcass goes through the same orientations as the other carcasses when on the transfer wheel – at 25. Further, applicant argues that the initial orientation and the final orientation of the carcasses are not identical in the McGuire et al. reference, however applicant has not specifically defined what constitutes the initial and final orientations of the carcass. Given the breadth of the claim one can deem the initial orientation to be any orientation along the circumference of the transfer wheel – at 25 of McGuire et al. and the final orientation being about 1cm or less from the initial orientation on the transfer wheel and therefore the positions are substantially the same. It appears in the arguments that applicant is referring to the position when the carcass holder first contacts the transfer wheel as the initial position and when it last contacts the transfer wheel as the final position. However, this is not what is claimed and therefore it is deemed that the McGuire et al. reference discloses the claimed invention.

Regarding claims 5-6 and 13, the 1:1 relationship of the holders and transfer wheel and the second orientation means are disclosed by McGuire et al. as seen above in paragraph 2 of this office action.

Regarding claim 12, applicant does not state from what or in relation to what the central shaft is upwardly extending from and therefore it is deemed that the shaft – proximate 61 in the McGuire et al. reference as seen in figures 6-8 extends upwardly from items – 62,63,66-69.

Regarding claims 14-16, applicant argues that the Berry reference US 5514033 does not disclose open ended accommodation spaces in the shackle. As seen in figure 6a of Berry, the

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shackle – at 19' is shown with accommodation spaces – at 24'-27' and as seen in figure 6a the portion of the accommodation space closest to item – 23' is shown as being open and as seen in figure 6b the portion of the accommodation space closest to item 28, is shown as being open in that the space between items 24' and 26' is open from the one end of the shackle – at 23' to the other end – at 28. Figure 6b shows the open space between items 24' and 26' and this space runs along the entire length of the shackle as seen in figure 6a. Further, applicant argues that the device of Berry does not perform the same function or achieve the same result. These arguments are valid for 112 6th paragraph situations, however as seen in claim 14 there is no means plus function language and therefore these arguments are moot. In a rejection under 102(b) a reference which may not solve the same problem as the claimed invention however it can be used as long as it discloses all of the claimed structural features, see MPEP section 2131.05.

Regarding claim 15, as seen in figures 6a-6d of Berry, items 24'-27' provide inclined turned in portions as seen in the curved and slanted portions shown in figure 6a, which prevent backward movement of the legs as seen in figure 7.

Regarding claim 16, Berry discloses that backward movement of the legs of the animal is prevented at the end of the shackle proximate item 28 as seen in figures 6a and 7, in that the legs of the bird cannot move through the shackle as they approach item 28.


Regarding the 35 U.S.C. 103(a) rejections, applicant relies upon the arguments relating to claim 1 and therefore see the response to these arguments above in paragraph 5 of this office action.


Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on 9hr compressed.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


David Parsley
Patent Examiner
Art Unit 3643


PETER M. POON
SUPERVISORY PATENT EXAMINER
12/13/07